

## **MARKET CREEK PARTNERS, LLC**

### **OPERATING AGREEMENT**

THE SECURITIES OFFERED HEREBY HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED, NOR APPROVED OR DISAPPROVED BY THE UNITED STATES SECURITIES AND EXCHANGE COMMISSION OR THE SECURITIES REGULATORY AUTHORITY OF ANY STATE, NOR HAS ANY COMMISSION OR AUTHORITY PASSED UPON OR ENDORSED THE MERITS OF THIS OFFERING OR THE ACCURACY OR ADEQUACY OF ANY DISCLOSURE MADE IN CONNECTION THEREWITH. ANY REPRESENTATION TO THE CONTRARY IS A CRIMINAL OFFENSE. THE SECURITIES OFFERED HEREBY MAY NOT BE RESOLD WITHOUT REGISTRATION UNDER THE SECURITIES ACT OF 1933, AS AMENDED, AND APPLICABLE STATE SECURITIES LAWS OR EXEMPTION THEREFROM.

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SCHEDULES

I Company Members

EXHIBITS

A Operating Agreement Definitions

**OPERATING AGREEMENT  
OF  
MARKET CREEK PARTNERS, LLC**

***EXPLANATION OF THE "BOXES" IN THIS DOCUMENT***

*Throughout this Agreement the reader will see text in "boxes" like this one. These "boxes" are intended to be helpful in understanding the Agreement. However, the text in the "boxes" is not part of the legally binding agreement.*

This Operating Agreement is made as of December 31, 2006, by and between Jacobs Center for Neighborhood Innovation, a California nonprofit public benefit corporation ("JCNI"), and Diamond Management, Inc., a California corporation ("Diamond Management"), under the Act. This Agreement amends and restates the Operating Agreement dated as of May 12, 2001 between JCNI and Diamond Management.

**RECITALS**

WHEREAS, JCNI has been recognized as being exempt from federal and California taxation under section 501(c)(3) of the Code and section 23701d of the California Revenue and Taxation Code.

WHEREAS, JCNI was organized for a charitable mission as set forth in its bylaws and mission statement.

WHEREAS, JCNI has organized Market Creek Partners, LLC, a California limited liability company (the "Company"), and Diamond Management as instrumentalities of its charitable mission under Section 501(c)(3) of the Code, to facilitate the social and economic growth of the Diamond Neighborhoods and their residents. The "Diamond Neighborhoods" consist of the following neighborhoods in the City of San Diego: Chollas View, Emerald Hills, South Encanto, North Encanto, Lincoln Park, Mt. Hope, Mountain View, Oak Park, Valencia Park and Webster.

WHEREAS, the purpose of Diamond Management is to manage real properties owned by JCNI and its affiliates and to act as a training business that reclaims neglected properties and creates value in the Diamond Neighborhoods, including skills, jobs, businesses and assets, by developing projects that are planned, designed, built, owned and served by persons in the Diamond Neighborhoods.

WHEREAS, Diamond Management has purchased 10,000 Units (the "DMI Units") with its initial Capital Contribution to the Company of \$100,000.

WHEREAS, in order to help carry out the charitable mission of JCNI, the Company presently intends to offer Units (the "DCI Units") to residents and other stakeholders in the Diamond Neighborhoods in a California intrastate public offering under Section 25113 of the Corporate Securities Law of 1968 (the "Offering").

WHEREAS, the Company has, in a private placement, issued Units (the "NUF Units") to JCNI for the benefit of the Neighborhood Unity Foundation ("NUF"), a California nonprofit public benefit corporation that is intended to be a publicly supported organization exempt from federal and California taxation under Section 501(c)(3) of the Code and Section 23701d of the California Revenue and Taxation Code.

NOW, THEREFORE, IT IS AGREED AS FOLLOWS:

1. Organization.

***The "Organization" Section describes the steps taken to form the Company as a legal entity, and the general characteristics of the Company.***

1.1 Formation. On November 23, 1999, the Articles of Organization of the Company were filed in the office of the Secretary of State of California in accordance with and under the Act.

1.2 Name and Place of Business. The name of the Company shall be Market Creek Partners, LLC, and its principal place of business shall be 5160 Federal Boulevard, San Diego, California 92105. The Manager may change such name, change such place of business or establish additional places of business of the Company as the Manager may determine to be necessary or desirable.

1.3 Business and Purpose of the Company. The principal purpose of the Company is to engage in the business of purchasing, developing, renting, selling and exchanging the Project, and related activities. Each Member acknowledges that the residents of the Diamond Neighborhoods desire improved opportunities for economic growth and advancement, and that JCNI has organized the Company as part of its program under Section 501(c)(3) of the Code, to facilitate the social and economic growth of the Diamond Neighborhoods.

1.4 Term. The term of the Company began on its date of formation set forth in Section 1.1 above and shall end on December 31, 2025, unless the term of the Company is extended by amendment to this Agreement, or the Company is terminated or dissolved on an earlier date as provided in this Agreement.

1.5 Required Filings. The Manager shall sign, acknowledge, file, record and/or publish such certificates and documents as may be required by this Agreement or by law in connection with the formation and operation of the Company.

1.6 Certain Transactions. This Agreement does not limit the right of any holder of Units in the Company, or any other person or entity, to engage in any particular business or venture or to compete with the Company.

2. Definitions. Definitions for some of the technical and other terms used in this Agreement are set forth on Exhibit A and are incorporated into this Agreement.

***The "Definitions" describe the meanings of words that are capitalized. These will help you understand this Agreement.***

3. Members.

***Each investor in the Company is a "Member." There are different types of Members, with different rights, duties and economic interests. This "Members" Section describes the financial contributions of each type of Member and how a person or organization can become a founding Member.***

3.1 JCNI Units. JCNI has contributed the property set forth on Schedule 1 and, in exchange, has received the JCNI Units set forth on Schedule 1. The Members agree and acknowledge that JCNI may make additional Capital Contributions and will receive, in exchange, additional JCNI Units based on the fair market value of such Capital Contributions.

3.2 DMI Units. Diamond Management has contributed the cash set forth on Schedule 1 and, in exchange, has received the DMI Units set forth on Schedule 1.

3.3 NUF Units. JCNI has purchased, on behalf of NUF, 50,000 NUF Units at \$10.00 per Unit. JCNI intends to subsequently assign or donate these NUF Units to NUF.

3.4 DCI Units.

***This Section sets the price for DCI Units (\$10.00 each) and explains how they are to be paid for. Each potential Diamond Community Investor must complete a Subscription Agreement. Funds received will be held in an Escrow Account with Wells Fargo Bank until all Subscription Agreements have been reviewed and all acceptance decisions made by the Company.***

3.4.1 Issuance. The Company is hereby authorized to sell and issue not less than 25,000 and not more than 50,000 DCI Units at a purchase price of \$10.00 per DCI Unit and to admit the persons or organizations that enter into accepted Subscription Agreements and acquire DCI Units as Members. The Company will not sell more than 1,000 DCI Units to any one Member.

3.4.2 Payment of Purchase Price. The purchase price of each DCI Unit shall be paid in full by check or money order. Payment of the purchase price for DCI Units shall constitute the initial Capital Contribution by the purchasers of DCI Units.

3.4.3 Subscription Agreement. Each person or organization that wants to acquire DCI Units shall submit a Subscription Agreement and the full Subscription Payment to the Company. The Manager, in accordance with the Diamond Community Investors Charter (the "Charter") and on behalf of the Company, shall determine whether to accept each Subscription Agreement. The Manager shall notify each person or organization in writing as to whether the relevant subscription has been accepted. Subject to Section 3.4.5, upon the acceptance of a Subscription Agreement, the related Subscription Payment shall become a Capital Contribution by the subscriber.

3.4.4 Escrow Account. Within three business days after receipt by the Company of both a Subscription Agreement and a Subscription Payment, that Subscription Payment shall be placed by the Company in an interest-bearing escrow account with Wells Fargo Bank (the "Escrow Account"). If the Manager waives its right to require submission of a full Subscription Payment, the portion of the Subscription Payment initially submitted and any additional installments of the Subscription Payment subsequently submitted shall be placed by the Company in the Escrow Account within three business days after receipt by the Company of each installment. All subscriptions will be reviewed, and final decisions regarding acceptance will be made, within 30 days after the end of the Offering. Subscription Payments received from potential investors whose subscriptions are not accepted will be returned within 10 days after completion of this review.

3.4.5 End of the Offering. The Offering is scheduled to end on October 31, 2006. However, the Offering may end earlier if we accept subscriptions from 450 investors or subscriptions for 50,000 DCI Units before that date. The Offering may also be ended before that date or extended beyond that date, in the Manager's sole discretion.

3.4.6 Interest on Escrow Account. The funds held in the Escrow Account will earn interest as specified in the Escrow Agreement. All interest earned on a Subscription Payment held in the Escrow Account for more than 30 days will be paid to the relevant subscriber retroactive to the date of deposit if the Offering is cancelled or if the subscription is not accepted. If the relevant Subscription Payment was made by installment, interest shall be calculated from the date of the first installment beginning 30 days after the date of deposit of the first installment.

3.5 Manager as Member. The Manager has purchased DMI Units as set forth in Section 3.2. As a result, the Manager shall be admitted to the Company as a Member with respect to the Units and shall be entitled to all rights as a Member, including but not limited to the right to vote on certain Company matters and the right to receive Distributions and allocations attributable to the DMI Units, all as set forth in this Agreement.

3.6 Admission of a Member. To the extent required by law, the Manager shall amend this Agreement and take such other action as the Manager deems necessary or appropriate promptly after receipt of any new Member's Capital Contributions to reflect the admission of that person or organization to the Company as a Member.



3.7 Changes as a Result of Issuance of Units. The Company may issue and sell additional Units, on the terms and conditions established by the Manager, provided that the terms and conditions are approved by a Majority Vote. All Members acknowledge and understand that their proportionate shares of Net Income, Net Loss and Distribution will be decreased as a result of the issuance of additional Units under this Section 3.

***Section 3.8 provides that Members are not generally liable for the debts of the Company. The Company may use all funds invested by its Members to pay its debts, but its creditors generally do not have the right to seek additional payment from any Member.***

3.8 Liability of Members. Except as specifically provided in this Agreement, neither the Manager nor any Member shall be (i) required to make any additional contributions to the Company, (ii) liable for the debts, liabilities, contracts, or any other obligations of the Company, or (iii) required to lend any funds to the Company or to repay to the Company, any Member, or any creditor of the Company any portion, or all, of any deficit balance in the Manager's or any Member's Capital Account.

3.9 Member Loans. Any Member, the Manager, or any Affiliate of the Manager may, but will have no obligation to, make loans to the Company. Any such loan shall bear interest at the actual cost of funds to the lender or 3% per annum, whichever is lower, and shall provide for the payment of principal and any accrued but unpaid interest in accordance with the terms of the promissory note evidencing such loan, but in no event later than dissolution of the Company.

3.10 Company Loans. The Company may obtain, in the sole and absolute discretion of the Manager, loans to acquire, develop or refinance the Project or to finance the Company's other authorized activities.

#### 4. Allocation of Tax Items.

***This Section 4 outlines the tax consequences of ownership of the Units for each type of Member. Under partnership tax law, the net income or net losses of the Company are attributed to one or more Members. The Company itself is not generally subject to income taxation, but its owners (the Members) are. The allocation of net income to a Member may not always match the amount of cash or property distributed to a Member. For instance, a Member could be taxed on more net income than the Member actually receives as a cash Distribution. This Section 4 should be read in conjunction with Section 5, which describes what the actual Distributions of cash and other property could be for each type of Member. You should talk to a tax attorney and/or an accountant about these tax consequences before you decide to invest in any Units.***

4.1 Allocation of Net Income and Net Loss. For each fiscal year, the Net Income and Net Loss of the Company shall be allocated as follows:

***This "Net Income Allocations" Section determines how Net Income is divided among the different types of Members. This is important because a Member is taxed on the amount of Net Income attributed to that Member. After any Net Losses are recouped by the allocation of Net Income, any remaining Net Income is allocated in a series of "buckets."***

- ***The first "bucket" is a 10% preferred return on the DCI Units (those issued to Diamond Community Investors in the Offering) in any year in which there is sufficient Net Income to allocate this preferred return. If the available Net Income does not reach a 10% return for that year, whatever lesser amount is available will be allocated.***
- ***The second "bucket" is a 10% return on the NUF Units.***
- ***The third "bucket" is a 7% return on the JCNI Units and the DMI Units.***
- ***The fourth "bucket" calls for any remaining Net Income to be allocated to all of the Members in proportion to the numbers of their Units.***

#### 4.1.1 Net Income Allocations.

(a) First, after giving effect to the special allocations set forth in Sections 4.2 and 4.3, Net Income for any fiscal year shall initially be allocated among the Members in proportion to and to the extent of Net Loss allocated to the Members under Section 4.1.2, until the aggregate Net Income allocated to the Members under this Section 4.1.1(a) for such fiscal year and all previous fiscal years is equal to the aggregate Net Loss allocated to the Members under Sections 4.1.2 for all previous fiscal years.

(b) Second, with respect to any particular fiscal year, to the DCI Units until the DCI Units have been allocated an amount equal to a 10% return for that year on the Capital Contributions of each Diamond Community Investor (the "DCI Preferred Return").

(c) Third, with respect to any particular fiscal year, to the NUF Units until the NUF Units have been allocated an amount equal to a 10% return for that year on the Capital Contributions of each holder of NUF Units (the "NUF Return").

(d) Fourth, with respect to any particular fiscal year, to the JCNI Units and the DMI Units, pro rata based on the total number of outstanding JCNI Units and DMI Units, until the JCNI Units and the DMI Units have collectively been allocated an amount equal to a 7% return for that year on the Capital Contributions of each holder of JCNI Units and DMI Units (the "JCNI/Diamond Management Return").

(e) Fifth, with respect to any particular fiscal year, any remaining Net Income shall be allocated to all Members in proportion to the Total Outstanding Units.

4.1.2 Net Loss Allocations. After giving effect to the special allocations set forth in Sections 4.2 and 4.3, Net Loss for any fiscal year shall be allocated to the Members in proportion to the Total Outstanding Units. Notwithstanding the foregoing, Net Loss shall not be allocated to any Member to the extent this allocation would cause any Member to have an Adjusted Capital Account Deficit at the end of a fiscal year.

***The provisions in Sections 4.2 through 4.8, as required by the income tax laws, call for changes in the allocation of Net Income and Net Loss to the extent required to help assure that the allocations reflect the actual economic risks and rewards to the various Members.***

#### 4.2 Special Allocations.

(a) Qualified Income Offset. Except as provided in Section 4.2(b), in the event any Member unexpectedly receives any adjustments, allocations, or distributions described in Treasury Regulations Sections 1.704-1(b)(2)(ii)(d)(4), 1.704-1(b)(2)(ii)(d)(5), or 1.704-1(b)(2)(ii)(d)(6), items of Company income and gain shall be specially allocated to such Member in an amount and manner sufficient to eliminate, to the extent required by the Treasury Regulations, the Adjusted Capital Account Deficit created by such adjustment, allocation or distribution as quickly as possible.

***The provision in Section 4.2(b) provides that if the Company has property subject to a loan that exceeds the property book value for tax purposes, if the loan is paid down the Members will be taxed on the amount of that paydown.***

(b) Company Minimum Gain Chargeback. Despite any other provision of this Section 4, if there is a net decrease in Company Minimum Gain during any Company fiscal year, each Member shall be specially allocated items of Company income and gain for such year (and, if necessary, subsequent years) in an amount equal to such Member's share of the net decrease in Company Minimum Gain, determined in accordance with Treasury Regulations Section 1.704-2(g)(2). This Section 4.2(b) is intended to comply with the partnership minimum gain chargeback requirement in the Treasury Regulations and shall be interpreted consistently therewith. This provision shall not apply to the extent the Member's share of net decrease in Company Minimum Gain is

caused by a guaranty, refinancing, or other change in the debt instrument causing it to become partially or wholly recourse debt or Member Nonrecourse Debt, and such Member bears the economic risk of loss (within the meaning of Treasury Regulations Section 1.752-2) for the newly guaranteed, refinanced or otherwise changed debt or to the extent the Member contributes cash to the capital of the Company that is used to repay the Nonrecourse Debt, and the Member's share of the net decrease in Company Minimum Gain results from the repayment.

(c) Nonrecourse Deductions. Nonrecourse Deductions and each Member's share of excess Nonrecourse Debt for any fiscal year or other period shall be allocated in proportion to the Total Outstanding Units.

4.3 Curative Allocations. Despite any other provision of this Agreement, the Regulatory Allocations shall be taken into account in allocating items of income, gain, loss and deduction among the Members so that, to the extent possible, the net amount of such allocations of other items and the Regulatory Allocations to each Member shall be equal to the net amount that would have been allocated to each such Member if the Regulatory Allocations had not occurred.

4.4 Allocation Among Units. Except as otherwise provided in this Agreement, all Distributions and allocations made to the Units shall be in the ratio of the number of Units held by each such Member on the date of such allocation (which allocation date shall be deemed to be the last day of each month) to the Total Outstanding Units as of such date, and, except as otherwise provided in this Agreement without regard to the number of days during such month that the Units were held by each Member. Members who purchase or acquire Units at different times during the Company tax year shall be allocated Net Income and Net Loss using the monthly convention set forth in Section 4.5. For purposes of this Section 4, an Economic Interest Owner shall be treated as a Member.

4.5 Assignment. In the event of the assignment of a Unit, the Net Income and Net Loss shall be apportioned as between the Member and the Member's assignee based upon the number of months of their respective ownership during the year in which the assignment occurs, without regard to the results of the Company's operations during the period before or after such assignment. Distributions shall be made to the holder of record of the Units as of the date of the Distribution. An assignee who receives Units during the first 15 days of a month will receive any allocations relative to such month. An assignee who acquires Units on or after the sixteenth day of a month will be treated as acquiring such Units on the first day of the following month.

4.6 Power of Manager to Vary Allocations. It is the intent of the Members that each Member's share of Net Income and Net Loss be determined and allocated in accordance with Section 704(b) and Section 514(c)(9) of the Code (except with respect to the NUF Units) and the provisions of this Agreement shall be so interpreted. Therefore, if the Company is advised by the Company's legal counsel that the allocations provided in this Section 4 are unlikely to be respected for federal income tax purposes, the Manager is hereby granted the power to amend the allocation provisions of this Agreement to the minimum extent necessary to comply with Section 704(b) and Section 514(c)(9) of the Code and effect the plan of allocations and Distributions provided for in this Agreement.

4.7 Consent of Members. The allocation methods of Net Income and Net Loss set forth in this Section 4 are hereby expressly consented to by each Member as a condition of becoming a Member.

4.8 Withholding Obligations.

4.8.1 If the Company is required (as determined in good faith by the Manager) to make a payment (a "Tax Payment") with respect to any Member to discharge any legal obligation of the Company or the Manager to make payments to any governmental authority with respect to any federal, foreign, state or local tax liability of such Member arising as a result of such Member's interest in the Company, then, despite any other provision of this Agreement to the contrary, the amount of any such Tax Payment shall be deemed to be a loan by the Company to such Member, which loan shall bear interest at the Prime Rate and be payable upon demand or by offset to any Distribution which otherwise would be made to such Member.

4.8.2 If and to the extent the Company is required to make any Tax Payment with respect to any Member, or elects to make payment on any loan described in Section 4.8.1 by offset to a Distribution to a Member, either (i) such Member's proportionate share of such Distribution shall be reduced by the amount of such Tax Payment, or (ii) such Member shall pay to the Company prior to such Distribution an amount of cash equal to such Tax Payment. In the event a portion of a Distribution in kind is retained by the Company under clause (i) above, such retained property may, in the discretion of the Manager, either (A) be distributed to the other Members, or (B) be sold by the Company to generate the cash necessary to satisfy such Tax Payment. If the property is sold, then for purposes of income tax allocations only under the Agreement, any gain or loss from such sale or exchange shall be allocated to the Member to whom the Tax Payment relates. If the property is sold at a gain, and the Company is required to make any Tax Payment on such gain, the Member to whom the gain is allocated shall pay the Company prior to the due date of the Tax Payment an amount of cash equal to such Tax Payment.

4.8.3 The Manager shall be entitled to hold back any Distribution to any Member to the extent the Manager believes in good faith that a Tax Payment will be required with respect to such Member in the future and the Manager believes that there will not be sufficient subsequent Distributions to make such Tax Payment.

## 5. Distributions.

***The Manager decides when, if ever, cash is to be distributed to the Members. Under Section 5.1, Diamond Community Investors, for instance, could be taxed on the Net Income allocated to them even though they did not receive cash Distributions from the Company.***

5.1 Amount and Time of Distributions. Subject to Section 11 regarding dissolution and liquidation, the Manager shall distribute Distributable Cash to the Members at such time as the Manager deems advisable.

5.2 Distributions to Members. Subject to Section 11.3 regarding dissolution and liquidation, all Distributions to the Members shall be made in accordance with the following order of priority:

***Distributions will be made in the same general order as Net Income is allocated in the "buckets" described in Section 4.1.1 above. Generally, this helps assure that if Distributions are made they are made proportional to the income tax consequences to the various Members. However, under Section 5.5, up to 5% of the amounts that would otherwise be distributed on the DCI Units may be held back by the Manager for a Repurchase Reserve (see Section 4 of the Charter). Therefore, Diamond Community Investors may be taxed on these amounts even though they have not received them.***

5.2.1 First, to holders of DCI Units until the holders of the DCI Units have been distributed a cumulative amount equal to the aggregate DCI Preferred Return (10% on Capital Contributions) allocated to the DCI Units under Section 4.1.1(b) for each fiscal year as to which the DCI Preferred Return is calculated, subject to Section 5.5.

5.2.2 Second, to holders of NUF Units until the holders of the NUF Units have been distributed a cumulative amount equal to the aggregate NUF Return (10% on Capital Contributions) allocated to the NUF Units under Section 4.1.1(c) for each fiscal year as to which the NUF Return is calculated.

5.2.3 Third, to holders of JCNI Units and DMI Units proportionately, until the holders of the JCNI Units and the DMI Units have been distributed a cumulative amount equal to the aggregate JCNI/Diamond Management Return (7% on Capital Contributions) allocated to the JCNI Units and the DMI Units under Section 4.1.1(d) for each fiscal year as to which the JCNI/Diamond Management Return is calculated.

5.2.4 Fourth, any remaining Distributions shall be allocated to the Members in proportion to the Total Outstanding Units.

5.3 Distributions Other Than Cash. No Member shall have the right to receive property other than money in any Distribution. Except on dissolution and winding up of the Company, no Member may be compelled to accept a Distribution of any asset in kind.

5.4 Priorities Among Members. Except as provided in this Agreement, no Member shall be entitled to any priority or preference over any other Member as to receipt of Distributable Cash or as to the return of capital on dissolution of the Company.

5.5 Repurchase Reserve. The Manager shall have the power to set aside, from Distributable Cash that would otherwise be distributable to the holders of DCI Units, a Repurchase Reserve specifically for the repurchase of DCI Units. Distributions from such reserve shall be made in the sole discretion of the Manager, and shall otherwise be administered in accordance with and subject to the limitations set forth in the Charter.

5.6 Restrictions on Distributions. No Distribution shall be made if, after giving effect to the Distribution:

5.6.1 The Company would not be able to pay its debts as they become due in the usual course of business; or

5.6.2 The Company's total assets would be less than the sum of its total liabilities.

6. Compensation to Manager and Affiliates; Payment of Company Expenses.

***The Manager may only be compensated under the Property Management Agreement of the Company or if approved by a Majority Vote of the Units. The Manager is generally not responsible for any of the Company's operating expenses. The Manager's out-of-pocket expenses related to the Company are to be reimbursed by the Company.***

6.1 Manager and Affiliate Compensation. The Manager and its Affiliates may receive compensation from the Company for services rendered or to be rendered to the Company only as specified in this Agreement or as approved by a Majority Vote of the Units. By becoming a Member, each Member consents to the foregoing and agrees that the receipt of compensation by the Manager or an Affiliate of the Manager in compliance with this Section 6.1 shall not constitute a breach of fiduciary duty by the Manager or such Affiliate.

6.2 Property Manager. As compensation for its services, the Property Manager, and as applicable its Affiliates, shall receive compensation for services rendered or to be rendered as specified in the Property Management Agreement.

6.3 Company Expenses.

6.3.1 Operating Expenses. Subject to the limitations in Section 6.3.2, the Company shall pay directly, or reimburse the Manager as the case may be, for all of the costs and expenses of the Company's operations, excluding costs and expenses of the initial organization of the Company and of the Offering, and including, without limitation, the following costs and expenses:

(a) All costs of personnel employed by the Company who are directly involved in the Company's business;

(b) All compensation due to the Manager or its Affiliates for services rendered to the Company as specified in this Agreement or the Property Management Agreement;

(c) All costs of personnel employed by the Manager or its Affiliates who are directly involved in the business of the Company;

- (d) All costs of borrowed money, taxes and assessments on the Property and other taxes applicable to the Company;
- (e) Legal, accounting, audit, brokerage, and other fees;
- (f) Fees and expenses paid to independent contractors, mortgage bankers, real estate brokers, and other agents;
- (g) Costs of acquiring, owning, developing, improving, operating, and disposing of Property;
- (h) Expenses incurred in connection with the development, alteration, maintenance, repair, remodeling, refurbishment, leasing and operation of Property;
- (i) All expenses incurred in connection with the maintenance of Company books and records, the preparation and dissemination of reports, tax returns or other information to the Members, and the making of Distributions to the Members;
- (j) Expenses incurred in preparation and filing reports or other information with appropriate regulatory agencies;
- (k) Expenses of insurance as required in connection with the business of the Company, other than any insurance insuring the Manager against losses for which the Manager is not entitled to be indemnified under Section 7.9;
- (l) Costs incurred in connection with any litigation in which the Company may become involved, or any examination, investigation, or other proceedings conducted by any regulatory agency, including legal and accounting fees;
- (m) Actual costs of goods and materials used by or for the Company;
- (n) Costs of services that could be performed directly for the Company by independent parties such as legal, accounting, secretarial or clerical, reporting, transfer agent, data processing and duplicating services but which are in fact performed by the Manager or its Affiliates, but not in excess of the lesser of the actual costs to the Manager or its Affiliates of providing such services or the amounts which the Company would otherwise be required to pay to independent parties for comparable services in the same geographic locale;
- (o) Expenses of Company administration, accounting, documentation and reporting;
- (p) Expenses of revising, amending, modifying, or terminating this Agreement;
- (q) All travel expenses incurred in connection with the Company's business authorized by the Manager; and
- (r) All other costs and expenses incurred in connection with the business of the Company except those set forth in Section 6.3.2.

6.3.2 Manager's Overhead. Except as set forth in this Section 6, the Manager and its Affiliates shall not be reimbursed for the Manager's overhead expenses incurred in connection with the Company, including, but not limited to, rent, depreciation, utilities, capital equipment, and other operational and administrative items.

7. Authority and Responsibilities of Manager.

***In general, the Manager has the power to run the Company's business without the consent of the Members, subject only to certain restrictions. However, a majority of the Members may vote to replace the Manager.***

7.1 Management. The business of the Company shall be managed by the Manager. The initial Manager of the Company shall be Diamond Management. Except as otherwise set forth in this Agreement, the Manager shall have full and complete authority, power and discretion to manage and control the business and properties of the Company, to make all decisions regarding those matters, and to perform any and all other acts or activities customary or incident to the management of the Company's business.

7.1.1 Standard of Care. The Manager shall exercise ordinary business judgment in managing the business of the Company. The Manager shall not be liable or obligated to the Members for any action or inaction by the Manager in operating the business of the Company that results in any loss to the Company or its Members unless the action or inaction constituted fraud, breach of fiduciary duty, gross negligence or gross misconduct.

7.1.2 Devotion of Time by Manager. The Manager shall devote such care, time and attention to the business of the Company as is reasonably necessary. In this connection, the Members acknowledge that the Manager and its Affiliates might be managers of other limited liability companies and general partners of other partnerships, and might engage in other business of the type conducted by the Company, whether or not competitive with the business of the Company.

7.1.3 Exoneration of Manager and Officers. No person shall be personally liable under any judgment of a court or in any other circumstance for any debts, obligations or liabilities of, or judgments against, the Company, whether arising in contract, tort or otherwise, solely by reason of being a manager, officer or agent, or all of them, of the Company, except in the event of a breach of the standard of care set forth in Section 7.1.1.

7.1.4 Acts of Manager as Conclusive Evidence of Authority. Any note, mortgage, evidence of indebtedness, contract, certificate, conveyance or other writing, and any assignment or endorsement of any such document, signed or entered into between the Company and any other person, when signed by the Manager, shall not be invalidated as to the Company by any lack of authority of the Manager in the absence of actual knowledge on the part of the other person that the signing Manager had no authority to sign it.

7.2 The Manager.

***The Manager is elected by a majority of the Units. Nominations may be made by holders of over 5% of the Units. The Manager may only resign on 90 days notice and approval of a majority of the Units and a majority of the DCI Units.***

7.2.1 Election and Number of Managers. Managers shall be elected by the Members at a meeting of Members called for that purpose under Section 8.4.1 or by a written consent action taken by the Members without a meeting under Section 8.4.5. Nominations for Manager may be made only by the Manager or by Members holding more than 5% of the outstanding Units. Nominations must be provided in writing to the Manager at least 10 days prior to any meeting for the election of Manager, unless the Manager consents in writing to a shorter period. To be elected a Manager must receive a Majority Vote. Initially, there shall be only one Manager, Diamond Management, which shall serve until such an election occurs. Until changed by a Majority Vote, the number of Managers shall be one; provided, however, in no event shall the number of Managers exceed five.

7.2.2 Removal and Resignation of Manager; Filling of Vacancies.

(a) A Manager shall automatically be removed as a Manager if (i) an Event of Insolvency occurs with respect to the Manager, or (ii) the Manager is an individual who dies.

(b) A Manager may be removed by a Majority Vote if the Manager (i) is convicted of a felony or declared of unsound mind by an order of court, or (ii) violates any term of this Agreement, including, but not limited to, the standard of care set forth in Section 7.1.1.

(c) A Manager may only resign if (i) the Manager provides at least 90 days written notice to the Company, and (ii) the resignation is approved by both a Majority Vote and a Majority Vote of the DCI Units.

(d) If a Manager is removed or resigns the Members shall, at a duly called and held meeting or by written consent, elect a successor Manager to take office when the resignation or removal becomes effective. If the removed or resigning Manager is a Member, the removed or resigning Manager shall be entitled to retain any Units held.

7.2.3 Place of Meetings: Telephone Meetings. If there is more than one Manager, then meetings of the Managers may be held at any time and place within the Diamond Neighborhoods, and under the procedures for notice as designated from time to time by the Managers. Meetings may be held by conference telephone or similar communication equipment, provided that all Managers participating can hear one another.

7.2.4 Quorum. If there is more than one Manager, a majority of the authorized number of Managers shall constitute a quorum for the transaction of business.

7.2.5 Continuation of Meeting. If there is more than one Manager, whether or not a quorum is present, a majority of the Managers present may fix a later time and place to continue the meeting and shall provide reasonable notice of the continuance to the Managers not present.

7.2.6 Action Without a Meeting. If there is more than one Manager, any action required or permitted to be taken by the Managers may be taken without a meeting if all of the Managers consent in writing, including by e-mail, to that action. Any such action taken by written consent shall have the same force and effect as a unanimous vote of the Managers taken at a meeting, and all such written consents shall be filed with the minutes of the proceedings of the Managers.

7.2.7 Directors and Officers Insurance. During the service to the Company of each Manager, officer or agent, and for a period of three years after the date such service terminates, the Company shall carry directors and officers insurance covering claims against any such Manager and its Affiliates, and any such officer and agent, related to services rendered (i) to the Company, (ii) as an officer, director or manager of any organization under the control of the Company, or (iii) in another capacity at the request of the Company.

7.2.8 Method of Action by Manager. The Manager (or, if the Company has more than one Manager, a majority of the Managers) may sign and deliver documents on behalf of the Company, and all such documents shall constitute signed and delivered documents of the Company.

***Section 7.3 describes the broad authority of the Manager to operate the Company. Under other provisions of this Agreement, in some cases this authority requires a Majority Vote of the Members and in some cases of the DCI Units.***

7.3 Manager Authority. The Manager shall have all authority, rights and powers conferred by law (subject only to Section 8.2) and those required or appropriate to the management of the Company's business, which, by way of illustration but not by way of limitation, shall include the right, authority and power to cause the Company to do any of the following, as the Manager may deem in its discretion to be reasonably necessary and appropriate:

7.3.1 Take all actions as the developer and operator of the Project;



7.3.2 Acquire, hold, develop, lease, rent, operate, sell, exchange, subdivide and otherwise dispose of Property including the Project, subject to Section 8.2.13;

7.3.3 Borrow money and, if security is required for repayment of such borrowed money, pledge or mortgage or subject Property to any security device, obtain replacements of any mortgage or other security device, and prepay, in whole or in part, refinance, increase, modify, consolidate, or extend any mortgage or other security device, all on such terms and in such amounts as determined by the Manager;

7.3.4 Place record title to, or the right to use, Property in the name or names of a nominee or nominees for any purpose convenient or beneficial to the Company;

7.3.5 Enter into contracts and agreements in connection with the Company's business for any purpose convenient or beneficial to the Company, including without limitation (i) contracts or agreements with Affiliates of the Manager, and (ii) contracts or agreements of insurance (including errors and omissions insurance) for the conservation of Company assets or for the protection of the Company and the Manager;

7.3.6 Employ persons, who may be Affiliates of a Manager, in the operation and management of the business of the Company;

7.3.7 Prepare or cause to be prepared reports, statements, and other relevant information for Distribution to the Members;

7.3.8 Open accounts and deposits and maintain funds in the name of the Company in banks, savings and loan associations, "money market" mutual funds and other instruments;

7.3.9 Cause the Company to make or revoke any of the elections referred to in the Code (the Manager shall have no obligation to make any such elections);

7.3.10 Select as its accounting year a fiscal year as may be approved by the Internal Revenue Service (the Company has adopted a fiscal year ending June 30);

7.3.11 Determine the appropriate accounting method or methods to be used by the Company;

7.3.12 In addition to any amendments otherwise authorized herein, amend this Agreement without any action on the part of the Members by special or general power of attorney or otherwise:

(a) To add to the representations, duties, services or obligations of the Manager or its Affiliates, for the benefit of the Members;

(b) To cure any ambiguity or mistake, to correct or supplement any provision herein that may be inconsistent with any other provision herein, or to add any other provision with respect to matters or questions arising under this Agreement that will not be inconsistent with the provisions of this Agreement;

(c) To delete or add any provision of this Agreement required to be so deleted or added for the benefit of the Members by the staff of the Securities and Exchange Commission or by a state "Blue Sky" Commissioner or similar official;

(d) To amend this Agreement to reflect the addition or substitution of Members;

(e) To minimize the adverse impact of, or comply with, any final regulation of the United States Department of Labor, or other federal agency having jurisdiction, defining "plan assets" for ERISA purposes;

(f) To reconstitute the Company under the laws of another state if deemed in the best interest of the Company; or

(g) To sign, acknowledge and deliver any and all documents to effectuate the foregoing, including the signing, acknowledgment and delivery of any such document by the attorney-in-fact for the Manager under a special or limited power of attorney, and to take all such actions in connection therewith as the Manager shall deem necessary or appropriate with the signature of the Manager acting alone;

7.3.13 Require in any Company contract that the Manager shall not have any personal liability, but that the person or entity contracting with the Company is to look solely to the Company and its assets for satisfaction;

7.3.14 Lease personal property for use by the Company;

7.3.15 Establish reserves from income, including but not limited to the Repurchase Reserve, in such amounts as the Manager may deem appropriate, subject to the other provisions of this Agreement;

7.3.16 Temporarily invest the proceeds from sale of Units in U.S. government agency securities backed by the full faith and credit of the United States Government, and/or accounts with one or more financial institutions the accounts of which are insured by the Federal Deposit Insurance Corporation to the maximum extent permitted by law;

7.3.17 Make secured or unsecured loans to the Company and receive interest at the rates set forth herein, subject to the other provisions of this Agreement;

7.3.18 Designate a Member to serve as "tax matters partner," within the meaning of the Code, in discussions with the Internal Revenue Service regarding the tax treatment of items of Company income, loss, deduction or credit, or any other matter reflected in the Company's returns, and, if deemed in the best interest of the Members, agree to final Company administrative adjustments or file a petition for a readjustment of the Company items in question with the applicable court;

7.3.19 Redeem or repurchase Units on behalf of the Company, subject to the other provisions of this Agreement;

7.3.20 Hold an election for a successor Manager before the resignation, expulsion or dissolution of a Manager;

7.3.21 Initiate, settle and defend legal actions on behalf of the Company;

7.3.22 Admit itself as a Member, provided all requirements under this Agreement to be admitted as a Member are complied with;

7.3.23 Take all actions and make any decision under the Property Management Agreement;

7.3.24 Amend or terminate the Property Management Agreement;

7.3.25 Enter into any transaction with any partnership or venture;

7.3.26 Merge or combine the Company or "roll-up" the Company into a partnership, limited liability company or other entity with a Majority Vote of the Units and a Majority Vote of the DCI Units;

7.3.27 Place all or a portion of the Project in a single purpose or bankruptcy remote entity, or otherwise structure or restructure the Company to accommodate any financing for all or a portion of the Project;

7.3.28 Perform any and all other acts which the Manager is obligated or permitted to perform hereunder; and

7.3.29 Sign, acknowledge and deliver, on behalf of and in the name of the Company, any and all documents to effectuate the foregoing and all transactions and actions described in, or contemplated by, the Offering Circular, and take all such related actions the Manager may deem necessary or appropriate.

7.4 Restrictions on Manager's Authority. Neither the Manager nor any of its Affiliates shall have authority, without a Majority Vote of the Units, to take any of the following actions:

***Section 7.4 sets forth several specific matters that require the approval of both the Manager and a Majority Vote of the Units.***

7.4.1 Enter into contracts with the Company that would bind the Company after the expulsion, Event of Insolvency, or other cessation to exist of the Manager, or continue the business of the Company after the occurrence of such event;

7.4.2 Use or permit any other person to use Company funds or assets in any manner except for the exclusive benefit of the Company;

7.4.3 Alter the primary purpose of the Company;

7.4.4 Except for the Project, or an undivided interest in the Project, sell or lease to the Company any real property in which the Manager or any Affiliate has any interest;

7.4.5 Admit another person or entity as a Manager, except in compliance with the procedures set forth in this Agreement;

7.4.6 Reinvest Cash from Operations in any real property other than the Project;

7.4.7 Commingle the Company funds with those of any other person or entity, except for (i) the temporary deposit of funds in a bank checking account for the sole purpose of making Distributions immediately thereafter to the Members and the Manager or (ii) funds attributable to the Project or other real property owned by the Company and held for use in the management of the operations of the Project or such real property;

7.4.8 Directly or indirectly pay or award any finder's fees, commissions or other compensation to any person engaged by a potential investor for investment advice as an inducement to such advisor to advise the purchaser regarding the purchase of Units; or

7.4.9 Take any action under Section 8.2 without the required vote of the Members.

7.5 Responsibilities of Manager. The Manager shall:

7.5.1 Have a fiduciary responsibility for the safekeeping and use of all the funds and assets of the Company, whether or not in the Manager's possession or control, and the Manager shall not employ, or permit another to employ, such funds or assets in any manner except for the exclusive benefit of the Company;

7.5.2 Not receive from the Company a rebate or give-up or participate in any reciprocal business arrangements which would enable the Manager or any Affiliate to do so, or would otherwise circumvent the restrictions in the Rules of the California Department of Corporations against dealing with the Manager or its Affiliates;

7.5.3 Devote such of its time and business efforts to the business of the Company as the Manager shall in its discretion, exercised in good faith, determine to be necessary to conduct the business of the Company for the benefit of the Company and the Members;

7.5.4 File and publish all certificates, statements, or other documents required by law for formation, qualification and operation of the Company and for the conduct of its business in all appropriate jurisdictions;

7.5.5 Cause the Company to be protected by public liability, property damage and other insurance determined by the Manager in its discretion to be appropriate to the business of the Company;

7.5.6 At all times use its best efforts to meet applicable requirements for the Company to be taxed as a partnership and not as an association taxable as a corporation; and

7.5.7 Amend this Agreement to reflect the admission of Members not later than 90 days after their date of admission or substitution, to the extent determined necessary or advisable in the judgment of the Manager.

7.6 Signing of Documents by Manager. The Manager may sign any and all documents on behalf and in the name of the Company.

7.7 Officers.

***The Manager may appoint "officers" to carry out some, but not all, of the Manager's responsibilities under the Agreement. Section 7.7 outlines which responsibilities may be delegated, how officers are appointed, and how they would be replaced if they resign or are removed from office.***

7.7.1 Delegation of Authority by Manager. The Manager shall have the power to delegate, from time to time, to one or more officers of the Company, those powers of the Manager set forth in Section 7.3 as the Manager deems appropriate.

7.7.2 Appointment of Officers. The Manager may appoint officers at any time. The officers of the Company, if deemed necessary by the Manager, may include a chairperson, president, vice president, secretary, and chief financial officer. The officers shall serve at the pleasure of the Manager, subject to all rights, if any, of an officer under any contract of employment. Any individual may hold any number of offices. An officer shall be a resident of the State of California. The officers shall exercise such powers and perform such duties as specified in this Agreement and as shall be determined from time to time by the Manager, subject to the restrictions on delegation in this Agreement and the signature authority provisions of this Agreement.

7.7.3 Removal, Resignation and Filling of Vacancy of Officers. Subject to the rights, if any, of an officer under a contract of employment, any officer may be removed, either with or without cause, by the Manager at any time. Any officer may resign at any time by giving written notice to the Manager. Any resignation shall take effect at the date of the receipt of the notice or at any later time specified in the notice and, unless otherwise specified in the notice, the acceptance of the resignation shall not be necessary to make it effective. Any resignation is without prejudice to the rights, if any, of the Company under any contract to which the officer is a party. A vacancy in any office because of death, resignation, removal, disqualification or any other cause shall be filled in the manner prescribed in this Agreement for regular appointments to that office.

7.7.4 Salaries of Officers. Subject to the other terms of this Agreement, the salaries of all officers and agents of the Company shall be set by the Manager.

7.8 Tax Matters Member. The Members hereby appoint Diamond Management to act as the "tax matters partner," until a successor is designated under the terms of this Agreement.

## 7.9 Indemnification of Manager and Officers.

7.9.1 The Manager, its shareholders, Affiliates, officers, directors, partners, manager, members, employees, agents and assigns, and each officer and agent of the Company (each, an "Indemnitee" and, collectively, the "Indemnitees"), shall not be liable for, and shall be indemnified and held harmless (to the extent of the Company's assets) from, any loss or damage incurred by them in connection with the business of the Company. Such loss or damage may include but is not limited to costs and reasonable attorneys' fees incurred in connection with, and any amounts expended in the settlement of, any claims of loss or damage resulting from any act or omission performed or omitted to be performed in good faith (provided that such act or omission does not constitute fraud, breach of fiduciary duty, gross negligence or gross misconduct, and was performed or omitted to be performed under the authority granted to such Indemnitee by the Company), including without limitation, serving as a director, officer or other agent of another limited liability company, corporation or other entity at the direction of the Manager. However, the Manager shall not be indemnified or held harmless with respect to a loss or liability unless: (i) the Manager has determined, in good faith, that the course of conduct which caused the loss or liability was in the best interests of the Company; and (ii) the action or inaction did not constitute fraud, breach of fiduciary duty, gross negligence or gross misconduct by the Manager. Any indemnification shall be recoverable only from the assets of the Company and not from any other assets of the Members.

7.9.2 Despite Section 7.9.1, the Company shall not indemnify any Indemnitee for liability imposed or expenses incurred in connection with any claim arising out of an alleged violation of the Securities Act of 1933, as amended, or any other federal or state securities law, with respect to the offer and sale of the Units. Indemnification will be allowed for settlements and related expenses in lawsuits alleging securities law violations, and for expenses incurred in defending such lawsuits, provided that (i) there has been a successful adjudication on the merits of each count involving alleged securities law violations as to such Indemnitee; or (ii) such claims have been dismissed with prejudice on the merits by a court of competent jurisdiction as to such Indemnitee; or (iii) the indemnification is specifically approved by a court of competent jurisdiction as to the Indemnitee that has been advised as to the current position of the Securities and Exchange Commission (as to any claim involving allegations that the Securities Act of 1933, as amended, was violated) or the applicable state authority (as to any claim involving allegations that the applicable state's securities laws were violated).

7.9.3 The Company shall have the power to advance expenses incurred in defending any proceeding that is (i) initiated by a third party who is not an investor in the Company, or (ii) that is instituted by an investor in the Company and a court of competent jurisdiction approves advancement prior to the final disposition of such proceeding. Such advancement must be authorized by the Manager or, if the Manager is seeking indemnification, by a Majority Vote of the Units (not including any Units held by the Manager or by the investor who initiated the proceeding, as applicable) upon receipt of an undertaking by such person or entity to repay such amount unless it shall ultimately be determined that such person or entity is entitled to be indemnified by the Company. "Expenses" as used in this Section 7.9 include, without limitation, attorneys' fees and costs incurred by an Indemnitee in establishing whether a right to indemnification exists.

7.9.4 The Company shall have the power to purchase and maintain insurance, on behalf of any Indemnitee, against any potential liability that may be asserted against such Indemnitee in connection with the Indemnitee's status with, or actions taken on behalf or at the direction of, the Company. However, the Company shall not incur the cost of that portion of liability insurance that insures for any liability for which the Company would not have the power to indemnify against such liability under the provisions of Section 7.9.1 and 7.9.2.

7.10 No Personal Liability for Return of Capital. The Manager shall not be personally liable or responsible for the return or repayment of any portion of the Capital Contribution of any Member or any loan made by any Member to the Company, it being expressly understood that any such return of capital or repayment of any loan shall be made solely from the assets of the Company (which assets do not include any right of contribution from any Member).

7.11 Authority as to Third Persons.

7.11.1 The Manager shall have full authority to sign any and all agreements, contracts, conveyances, deeds, mortgages and other documents on behalf of the Company. No signature of any Member shall be required.

7.11.2 No third party dealing with the Company shall be required to investigate the authority of the Manager. No purchaser of any property or interest owned by the Company shall be required to determine the right to sell or the authority of the Manager to sign and deliver any instrument of transfer on behalf of the Company, or to see to the application or payout of revenues or proceeds paid or credited in connection therewith.

7.11.3 The Manager shall have the right by separate document to authorize one or more person or entities to sign leases and lease-related documents on behalf of the Company. Any leases and documents signed by any such person or entity shall be binding upon the Company as if signed by the Manager. Such person or entity need not be an officer of the Company.

8. Rights, Authority and Voting of the Members.

***Section 8 outlines the matters that the Members vote on, including matters that they have the right to approve without the consent of the Manager and those that require the consent of the Manager as well. The procedures for meeting and voting are also set forth in Section 8.***

8.1 Members Are Not Agents. Under Section 7 and the Articles of Organization, the management of the Company is vested in the Manager. A Member, as such, is not an agent of the Company, and has no authority to act on behalf of the Company or sign any document on behalf of the Company.

8.2 Voting by Members. Except as otherwise specifically provided in this Agreement or in the Charter, Members are entitled to cast one vote for each Unit they own. A Majority Vote is required to approve any act except as otherwise specified in Sections 8.2.1 through 8.2.14, inclusive, or in the provisions cross-referenced in such sections. Except as otherwise specifically provided in this Agreement, Members who own Units (but not Economic Interest Owners) shall have the right to vote only upon the following matters:

8.2.1 Election and removal of Managers, and setting of the number of Managers (if to be changed from one) in accordance with Section 7.2.1;

8.2.2 Continuation of the business of the Company after the sole Manager has ceased to be the Manager;

8.2.3 Amendment of this Agreement, in accordance with Section 14;

8.2.4 Dissolution and winding up of the Company as set forth in Section 11.1.2;

8.2.5 Compensation of the Manager and its Affiliates to the extent set forth in Section 6.1;

8.2.6 Removing a Manager under Section 7.2.2;

8.2.7 The merger, combination or "roll-up" of the Company in accordance with Section 7.3.26;

8.2.8 Any of the matters set forth in Section 7.4;

8.2.9 Certain matters regarding meetings of Members set forth in Section 8.4;

8.2.10 Certain matters regarding the liquidation of the Company's assets and related accounting, in the event there is not a Manager, in accordance with Section 11.3;

8.2.11 Certain matters set forth in the definition of "Capital Account";

8.2.12 Modification of the Property Management Agreement in any material respect;

8.2.13 The sale of all or substantially all of the assets of the Company, which shall also require a Majority Vote of the DCI Units; and

8.2.14 Termination of the Property Management Agreement.

8.3 Member Vote; Consent of Manager. The matters subject to approval by the Members under Sections 8.2.1, 8.2.2, 8.2.4, 8.2.6, 8.2.9, 8.2.10, 8.2.14, 11.1.2, 11.2, and 11.3.1 require a vote of the Members only. Otherwise, unless specifically provided to the contrary in this Agreement, matters on which the Members vote shall also require the consent of the Manager to be effective.

8.4 Meetings of the Members; Power to Call Meetings. This Section 8.4 applies only to meetings of Members held under this Operating Agreement, and does not apply to meetings of Diamond Community Investors held under the Charter.

8.4.1 Call of Meetings. Meetings of Members may be held at such date, time and place in the City of San Diego as the Manager may fix from time to time. The Manager may at any time call for a meeting of the Members, or for a vote by written consent without a meeting, on matters on which the Members are entitled to vote. The Manager shall call for such a meeting (but not a vote by written consent without a meeting) following receipt of a written request for a meeting from Members holding at least 10% of the Units entitled to vote or Members holding at least 10% of the DCI Units entitled to vote, provided that in any 12-month period no more than two meetings may be called by holders of DCI Units without the consent of the Manager. Within 20 days after receipt of such request, the Manager shall notify all Members entitled to vote.

8.4.2 Notice. Written notice of each meeting shall be given to each Member entitled to vote at that meeting. Each notice shall be either personally delivered or mailed to the address appearing on the books of the Company. Each notice shall be delivered or mailed not less than 10, nor more than 60, days before the meeting. A notice shall specify the place, date and time of the meeting and contain a detailed statement of the action proposed, including the exact wording of any resolutions proposed for adoption by the Members and of any proposed amendment to this Agreement. No business may be transacted at the meeting unless specified in the notice.

8.4.3 Conduct of Meetings. The chairperson shall preside at each meeting and the secretary shall act as secretary of each meeting. In the absence of the chairperson or secretary, the Manager shall appoint a person to act as chairperson or secretary of the meeting, as applicable. The secretary of the meeting shall prepare, or cause to be prepared, minutes of the meeting, which shall be placed in the minute books of the Company. All meetings shall be held in accordance with Roberts Rules of Order (see [www.robertsrules.com](http://www.robertsrules.com)) unless the chairperson determines otherwise.

8.4.4 Rescheduling Meetings. A Member meeting may be rescheduled to another time or place before or after notice of the meeting is given. If the meeting has not yet started at the time it is rescheduled, the Manager may reschedule the meeting by following the procedures for calling and noticing a meeting in Sections 8.4.1 and 8.4.2. If the meeting has started but the chairperson decides to reschedule it, the chairperson will set the date and time of the meeting as follows: (i) if the meeting is rescheduled for a date that is within 45 days of the date of the original meeting, the chairperson shall announce the date and time of the rescheduled meeting at the meeting and no additional notice is required, or (ii) if the meeting is rescheduled for a date that is more than 45 days after the date of the original meeting, the Manager shall follow the procedures for calling and noticing a meeting in Sections 8.4.1 and 8.4.2.

8.4.5 Proxies. A Member may vote in person at a meeting or may vote by proxy. A proxy is a legal document that gives one person the right to appear at a meeting and vote on behalf of another person. To be valid, the proxy must be (i) in writing, (ii) signed by the Member with the voting rights, and (iii) dated on or prior to the date of the meeting at which the vote will take place. The proxy may, but is not required to, contain instructions

regarding how to vote (for example, which Manager nominees to vote in favor of). A Member who wishes to vote by proxy must submit the proxy to the Manager at or prior to the meeting at which the proxy will be used. A proxy will be valid for 60 days, unless it states in writing that it is valid for a shorter period of time, or unless it is revoked. A proxy may be revoked by the Member by: (i) delivering a new proxy to the Manager, (ii) delivering a written notice revoking the proxy to the Manager, or (iii) appearing at the meeting in person and voting. In any case, the new proxy or the written revocation must be dated later than the date of the original proxy being revoked.

8.4.6 Quorum. Actions may be taken at a meeting of Members only if a quorum is present at the beginning of the meeting. A quorum is present if Members entitled to vote a majority of the Units are present. A Member is deemed to be present at the meeting if the Member (i) appears in person, or (ii) has provided a proxy to someone else who appears in person at the meeting. If a quorum is not present at the beginning of a meeting, the chairperson may reschedule the meeting in accordance with Section 8.4.4, but no other business may be transacted. If a quorum is present at the beginning of a meeting, the meeting may continue even if Members leave. In this circumstance, when a vote is called, the Members still present shall be considered a quorum until that meeting ends.

8.4.7 Consent of Absentees. If a Member meeting is not properly called and noticed, the transactions of the meeting are still valid if (i) a quorum is present, and (ii) either before or after the meeting, each of the Members entitled to vote, not present in person or by proxy, signs a written waiver of notice, a consent to the holding of that meeting or an approval of the minutes of that meeting. All waivers, consents and approvals shall be filed with the Company records or made a part of the minutes of the meeting.

8.4.8 Action Without Meeting. Except as otherwise provided in this Agreement, any action which may be taken at a meeting of the Members may be taken without a meeting if a consent in writing, setting forth the action so taken, is signed by Members having not less than the minimum number of votes that would be necessary to take that action at a meeting at which all Members entitled to vote on such action were present and voted. If the Members are requested to consent on a matter, each Member must be given at least 10 days, but no more than 60 days, prior written notice of such request. However, if the Manager requests, or Members representing more than 10 % of the Units entitled to vote request, a meeting for the purpose of discussing or voting on the matter, a meeting must be held (and a notice must be given in the same manner as required by Section 8.4.2) and no action shall be taken until such meeting is held. Any action taken by written consent shall be effective upon the delivery to the Manager of the written consent signed (including in counterpart and by facsimile or other electronic means) by Members entitled to vote who hold sufficient Units to take the action set forth in such written consent.

8.4.9 Record Dates. The Manager may set a record date to determine which Members are entitled to (i) vote, (ii) receive notice of any meeting, (iii) receive a Distribution (in which case the record date shall also apply to Economic Interest Owners), or (iv) exercise any other rights. If a record date is set, it must be set in advance and may not be more than 60 days or less than 10 days prior to the date of the meeting or other action. If no record date is set the following applies:

(a) The record date for determining which Members are entitled to receive notice of or to vote at a meeting shall be the close of business on the business day prior to the day on which notice is given or, if notice is waived, at the close of business on the business day prior to the day on which the meeting is held;

(b) The record date for determining which Members are entitled to consent to an action in writing without a meeting shall be the day on which the first Member consents;

(c) The record date for any other purpose shall be the close of business on the date on which the Manager adopts a record date or the 60th day prior to the date of an action, whichever is later; and

(d) A determination of Members of record entitled to receive notice of or to vote at a meeting of Members shall apply to any rescheduling of the meeting. The only exception is that if the rescheduled meeting is more than 45 days after the original meeting, a new record date shall be set.



8.4.10 Inspector of Election. The Manager shall appoint an inspector of election before any Member meeting. The inspector of election may be any person who is not a nominee to become Manager at the meeting. If an inspector of election is not appointed, or if any person that is appointed fails to appear or refuses to act, the chairperson of the meeting shall appoint an inspector of election at the meeting. The inspector of election shall do the following at the meeting:

- (a) Determine the number of Units outstanding, the voting power of each outstanding Unit and the number of Units represented at the meeting;
- (b) Determine whether a quorum exists;
- (c) Determine the validity and effect of proxies;
- (d) Receive votes, ballots or written consents;
- (e) Hear and determine all questions regarding the right to vote;
- (f) Count all votes cast, whether by written consent, ballot or proxy;
- (g) Determine when the polls have closed;
- (h) Determine the result of the election; and
- (i) Take such further actions as may be necessary and proper to conduct the election or other vote with fairness to all Members entitled to vote.

8.4.11 Record Date and Closing Company Books. When a record date is fixed with respect to a given meeting, Distribution or other right, only Members of record on that date are entitled to receive notice of and to vote at the meeting or to receive a Distribution or allotment of rights, or to exercise the rights, as the case may be, even if Units are transferred on the books of the Company after the record date.

8.4.12 No Meetings of Members Required. Nothing contained in this Agreement may be construed to require that the Members hold meetings or, if meetings are held, that Members observe formalities in the holding of meetings. The fact that meetings are held on some occasions or that formalities are observed at some meetings shall not be construed to require the holding of meetings or the observance of formalities in future meetings.

8.5 Rights of Owners. No Owner shall have the right or power to: (i) withdraw or reduce such Owner's contribution to the capital of the Company, except as a result of the dissolution and termination of the Company or as otherwise provided in this Agreement or by law; (ii) bring an action for partition against the Company; or (iii) demand or receive property other than cash in return for such Owner's Capital Contribution. Except as provided in this Agreement, no Owner shall have priority over any other Owner either as to the return of Capital Contributions or as to allocations of the Net Income, Net Loss or Distributions of the Company. Other than upon the termination and dissolution of the Company as provided by this Agreement, there has been no time agreed upon when the contribution of each Owner (other than JCNI) is to be returned.

8.6 Restrictions on the Members. No Member shall:

8.6.1 Disclose to any non-Member, other than such Member's lawyers, accountants or consultants, or commercially exploit, any of the Company's business practices, trade secrets or any other information not generally known to the business community; or

8.6.2 Do any other act or deed with the intention of harming the business operations of the Company.

8.7 Return of Distributions to Owners. In accordance with the Act, an Owner may, under certain circumstances involving the Owner's knowledge that a Distribution was improper when the Owner approved the Distribution, be required to return to the Company, for the benefit of the Company's creditors, amounts previously distributed to the Owner. If any court of competent jurisdiction holds that any Owner is obligated to make any such payment, such obligation shall be the obligation of such Owner and not of the Company, the Manager or any other Owner.

9. Assignment of Units.

***In general, the financial interests in Units may be transferred if certain conditions are met. Some of the special conditions for transfer of DCI Units are described in the Charter. Transfer of voting and other rights under the Agreement can only be made with the consent of the Manager.***

9.1 Permitted Transfers. The transfer of DCI Units shall be governed solely by the Charter, and this Section 9.1 shall not be applicable to such transfer. Subject to the preceding sentence, a Member may sell, assign, encumber, give away by gift, or otherwise transfer JCNI Units, DMI Units and/or NUF Units (each such event, a "Transfer") provided that each of the conditions in Sections 9.1.1 through 9.1.9 are satisfied in the judgment of the Manager. The person or entity receiving the transferred Units (the "Transferee") will not be a Member but will instead be an Economic Interest Owner only. Once a Transfer has been made, the original Member making the transfer (the "Transferor") will no longer have any rights connected to, or ownership interest in, the transferred Units.

9.1.1 The Transfer is for, at a minimum, the lesser of (i) 20 Units or (ii) the total number of Units held by the Transferor;

9.1.2 The Manager consents in writing to the Transfer after determining, in the Manager's reasonable discretion, that the Transfer is in compliance with this Agreement;

9.1.3 The Transfer is not made to a minor (under 18 years old) or to a person who, for any reason, lacks the legal capacity to enter into contracts, except if the Transfer (i) occurs as a result of the death of the Transferor (for example, by a will), or (ii) is made to a custodian or trustee for a minor or other person who lacks contractual capacity, so long as the custodian or trustee meets the requirements to be a Member;

9.1.4 The Manager determines, with advice of counsel, that the Transfer will not jeopardize the applicability of the exemptions from the registration requirements under the Securities Act of 1933, as amended, and from registration or qualification under state securities laws, relied upon by the Company and Manager in offering and selling the Units or otherwise violate any federal or state securities laws;

9.1.5 The Manager determines, with advice of counsel, that, despite such transfer, the Units will not be deemed traded on an established securities market or "readily tradable on a secondary market (or the substantial equivalent thereof)" under the provisions applicable to publicly traded partnership status;

9.1.6 The Transfer is in writing, does not violate any of the provisions of this Agreement, is evidenced in a document signed by the Transferor, and is accepted by the Manager in writing;

9.1.7 The Transferee is a California resident;

9.1.8 A transfer fee is paid by the Transferor in an amount determined by the Manager to cover all reasonable expenses, including attorneys' fees and costs incurred by the Company in connected with such Transfer; and

9.1.9 The Transfer will not result in qualified benefit plan investors (for example, IRAs or 401(k) plans) owning 25% or more of the total Units outstanding subsequent to the Transfer.

9.2 Admission of Economic Interest Owner as Member. The right of an Economic Interest Owner holding DCI Units to be admitted to the Company as a Member shall be governed solely by the Charter, and this Section 9.2 shall not be applicable to such admission. Subject to the preceding sentence, no Economic Interest Owner of JCNI Units, DMI Units or NUF Units shall have the right to become a Member unless the Manager consents and all of the conditions in Sections 9.2.1 through 9.2.3 are satisfied in the judgment of the Manager.

9.2.1 A written assignment is filed with the Company specifying the number of JCNI Units, DMI Units or NUF Units being assigned and stating the intention of the Transferor that the Transferee succeed to the Transferor's interest as a Member;

9.2.2 The Transferor and Transferee sign, acknowledge and deliver to the Manager such other documents as the Manager deems necessary or desirable to carry out the Transfer, which may include an opinion of counsel regarding the effect and legality of the Transfer, and which must include (i) the written acceptance and adoption by the Transferee of the provisions of this Agreement, and (ii) the Transferee's signing, acknowledgment and delivery to the Manager of a special power of attorney as described in Section 12; and

9.2.3 A transfer fee sufficient to cover all reasonable costs and expenses incurred by the Company in connection with the Transfer, in an amount determined by the Manager in its reasonable discretion and including without limitation attorney's fees and costs, is paid to the Company.

Even if all of the conditions in this Section 9.2 are satisfied, the Manager shall not have any obligation to approve the admission to the Company, as a Member, of an Economic Interest Owner. Within 45 days of receiving the written assignment required by Section 9.2.1 the Manager shall inform the Transferee in writing whether or not the Transferee will be admitted as a Member.

9.3 Consent of Member. By signing or adopting this Agreement, each Member hereby consents to the admission of additional Members, and to the admission to the Company as a Member of any Economic Interest Owner, upon consent of the Manager and in compliance with this Agreement.

9.4 Rights of Economic Interest Owner. An Economic Interest Owner shall be entitled to receive Distributions from the Company attributable to the Interest acquired in a Transfer from and after the effective date of the Transfer. However, the Company shall incur no liability for allocations of Net Income and Net Loss, for Distributions, or for the transmittal of reports or accounting, until the written assignment required by Section 9.2.1 has been accepted by the Manager and recorded on the books of the Company. The effective date of such Transfer shall be the date on which all of the requirements of Section 9.1 have been complied with, subject to Section 4.5.

9.5 Right to Inspect Books. Except as provided in the Act, an Economic Interest Owner shall have no right to inspect the Company's books or records, to vote on Company matters, or to exercise any other right or privilege as a Member, until and unless such Economic Interest Owner is admitted to the Company as a Member.

9.6 Assignment of 50% or More of Units. No assignment of any Units may be made if the Units to be assigned, when added to the total of all other Units assigned within the 12 immediately preceding months, would, in the opinion of counsel for the Company, result in the termination of the Company under the Code.

9.7 Transfer Subject to Law. No Transfer of any Units may be made except in compliance with the applicable governmental laws and regulations, including state and federal securities laws.

9.8 Termination of Membership Interest. Upon any Transfer made by a Member in violation of this Agreement, or upon the occurrence of a Dissolution Event as to any Member that does not result in the dissolution of the Company, the Membership Interest of such Member shall be converted into an Economic Interest.

9.9 Repurchase of DCI Units. DCI Units may be repurchased by the Company as set forth in the Charter.

9.10 Right to Sell DCI Units. DCI Units may be sold to the Company, JCNI, NUF, DMI and/or one of their respective nominees after July 1, 2012, as set forth in the Charter.

9.11 Right to Require the Company to Purchase JCNI Units. The Diamond Community Investors may require the Company to purchase all of the outstanding Units held by JCNI after January 1, 2018, as set forth in the Charter.

## 10. Books, Records, Accounting and Reports.

10.1 Records, Audits and Reports. The Company shall maintain at its principal office the Company's records and accounts of all operations and expenditures of the Company including the following:

10.1.1 For at least four years from the end of the Offering, the written subscription documents, or summaries, demonstrating that each investor and investment in DCI Units meets the criteria stated in the Offering Circular, including without limitation the representation of each investor that such investor is investing for the investor's own account;

10.1.2 A current list in alphabetical order of the full name and last known business or residence address of each Owner (including information regarding which Owners are Members and which are Economic Interest Owners) and the Manager, together with the Capital Contribution and the numbers and types of Units held by such Owner;

10.1.3 A copy of the Articles of Organization (including any amendments), and any powers of attorney under which the Articles of Organization or any such amendments were signed;

10.1.4 Copies of the Company's federal, state, and local income tax or information returns and reports, if any, for the six most recent taxable years;

10.1.5 Copies of this Agreement (including any amendments) and any powers of attorney under which any written accounting or any amendments to this Agreement were signed;

10.1.6 Copies of financial statements of the Company, if any, for the six most recent years; and

10.1.7 The Company's books and records as they relate to the internal affairs of the Company for at least the current and past four fiscal years.

## 10.2 Information and Inspection Rights.

10.2.1 Each Member, and/or its representative designated in writing, may inspect and copy the records of the Company (except for those records, such as personnel records, that may not be legally disclosed, and those as to which the attorney-client privilege applies). The Company may collect a reasonable charge for copies. Without limiting this right of access, each Member has the right, upon reasonable written request to the Manager and for purposes related to the interest of that person or entity as a Member, which purposes must be stated in the written request, to receive:

(a) True and full information regarding the status of the business and financial condition of the Company;

(b) Promptly after becoming available, a copy of the Company's federal, state and local income tax returns for each year;

(c) A copy of this Agreement (including any amendments) and the Articles of Organization (including any amendments), along with signed copies of any written powers of attorney under which this Agreement and any certificate and any amendments were signed; and

(d) True and full information regarding the amount of cash and description and statement of the agreed value of any property or services contributed (or agreed to be contributed in the future) by each Member, and the date on which each Member became a Member.

10.2.2 A current list of the name and last known business, residence or mailing address of each Member and the Manager shall be maintained as part of the books and records and shall be mailed to any Member upon request.

10.3 Annual Report. The Manager will cause the Company, at the Company's expense, to prepare an annual report to the Members that includes the information described in Sections 10.3.1 through 10.3.5. This annual report must be provided to each member within 120 days after the end of each fiscal year.

10.3.1 An audited annual report containing a year end balance sheet, income statement and a statement of changes in financial position accompanied by an auditor's report (which may contain a qualified opinion or explanatory paragraph).

10.3.2 A schedule of all Distributions to Members, identifying the source of each Distribution and the dollar amount attributable to each source.

10.3.3 A schedule of all compensation paid, costs reimbursed, and Distributions made to the Manager, JCNI and their Affiliates, including a description of the services performed in consideration for such compensation, and identifying the source of each Distribution.

10.3.4 A report of the Company's activities during the period covered by the annual report.

10.3.5 If forecasts have been provided to holders of DCI Units, a table comparing the forecasts previously provided with the actual results during the period covered by the report.

10.4 Tax Information. The Manager shall cause the Company, at the Company's expense, to prepare and timely file income tax returns for the Company with the appropriate authorities, and shall cause all Company information necessary in the preparation of the Owners' individual income tax returns to be distributed to the Owners within 75 days after the end of each fiscal year. The Manager shall also distribute a copy of the Company's tax return to any Member upon written request.

10.5 Unit Certificates. A memorial certificate for a Unit or group of Units may be issued by the Manager, in the discretion of the Manager, in any form determined by the Manager. However, such certificates shall not have any legal effect and any Transfer of Units can only be effective when such Transfer is evidenced in the Company's records and is otherwise made in accordance with the terms of this Agreement. Delivery or transfer of a memorial certificate shall not effect any change in the ownership of the related Units.

## 11. Dissolution of the Company.

11.1 Dissolution Events. The Company shall only be dissolved upon the earliest to occur of the following:

11.1.1 The happening of any event of dissolution specified in the Articles of Organization;

11.1.2 A determination to dissolve the Company by (i) a Majority Vote of the Members, and (ii) a Majority Vote of the DCI Units;

11.1.3 The entry of a decree of judicial dissolution; or

11.1.4 The expiration of the term of the Company set forth in Section 1.4.

11.2 Certificate of Dissolution. As soon as possible following the occurrence of any of the events specified in Section 11.1, a Manager who has not wrongfully dissolved the Company or, if none, the Members, shall execute a Certificate of Dissolution in such form as shall be required by the Act.

11.3 Liquidation of Assets. Upon a dissolution of the Company under Section 17350 et seq. of the Act, the Manager (or if there is no Manager, the Members or persons designated by a Majority Vote) shall take full account of the Company's assets and liabilities, shall liquidate the assets of the Company as promptly as is consistent with obtaining their fair market value, and shall apply and distribute the proceeds of liquidation in the following order:

11.3.1 To the payment of creditors of the Company, other than Members who are creditors, but excluding secured creditors whose obligations will be assumed or otherwise transferred on liquidation of Company assets, and then to the payment of Members who are creditors of the Company;

11.3.2 To the setting up of any reserves as required by law for any liabilities or obligations of the Company; provided, however, that such reserves must be held in a bank or trust company in an interest-bearing escrow account for the purpose of payment of such liabilities or obligations and, at the expiration of a reasonable period, for the purpose of distributing the balance remaining in accordance with Section 11.3.3; and

11.3.3 To the Owners in proportion to their positive Capital Account balances as of the date of such Distribution, after giving effect to all Capital Contributions, Distributions and allocations for all periods, including the period during which such Distribution occurs, and then, after the Capital Accounts of all Owners have been brought to zero, to the Owners in proportion to the number of Units owned by each Owner.

11.4 Distributions Upon Dissolution. Each Member shall look solely to the assets of the Company for all Distributions and Capital Contributions, and shall have no claim (upon dissolution or otherwise) against the Manager or any Member for any Distributions or Capital Contributions.

11.5 Liquidation of Member's Interest. If there is a Liquidation of a Member's interest in the Company, other than a repurchase from the Repurchase Reserve, any liquidating Distribution shall be made only to the extent of the positive Capital Account balance, if any, of such Member for the taxable year during which such Liquidation occurs after proper adjustments for allocations and Distributions for such taxable year up to the time of Liquidation. Such Distributions shall be made by the end of the taxable year of the Company during which such Liquidation occurs, or if later, within 90 days after such Liquidation.

11.6 Certificate of Dissolution. The Manager or Members who filed the Certificate of Dissolution shall cause to be filed in the office of, and on a form prescribed by, the California Secretary of State, a certificate of cancellation of the Articles of Organization upon the completion of the winding up of the affairs of the Company.

## 12. Special and Limited Power of Attorney.

***The power of attorney referred to in this Section 12 gives Diamond Management the authority to sign documents necessary to (i) maintain the legal status of the Company, and (ii) carry out the purposes of the Company. Diamond Management is obligated to provide the Members with copies of any amendments to this Agreement that are signed using the special powers of attorney received from those Members.***

12.1 Power of Attorney. Diamond Management shall at all times during the term of the Company have a special and limited power of attorney as the attorney-in-fact for each Member, with power and authority to act in the name and on behalf of such Member to sign, acknowledge and swear to in the signing, acknowledgment and filing of documents which are not inconsistent with the provisions of this Agreement and which may include, by way of illustration but not by limitation, the following:

12.1.1 Any amendments to this Agreement that, under the laws of the State of California or the laws of any other state, are required to be filed or which Diamond Management shall deem it advisable to file;

12.1.2 Any document that may be required to be filed by the Company under the laws of any state or by any governmental agency or which Diamond Management shall deem it advisable to file;

12.1.3 Any document that may be required to carry out the continuation of the Company, the admission of Members, or the dissolution and termination of the Company (provided such continuation, admission or dissolution and termination are in accordance with the terms of this Agreement);

12.1.4 Any contract for purchase or sale of real estate, and any deed, deed of trust, mortgage, or other instrument of conveyance or encumbrance, with respect to Property; and

12.1.5 Any and all other documents that Diamond Management may deem necessary or desirable to carry out the purposes of this Agreement and carry out fully its provisions.

12.2 Provision of Power of Attorney. The special and limited power of attorney of Diamond Management:

12.2.1 Is a special power of attorney coupled with the interest of Diamond Management and its assets;

12.2.2 Is irrevocable;

12.2.3 Shall survive the death, incapacity, termination or dissolution of the granting Member;

12.2.4 Is limited to those matters set forth in Section 12.1;

12.2.5 May be exercised by Diamond Management signing documents or taking other actions as attorney-in-fact for the Members on a list provided at that time to the party relying on that signing or action, or by such other method as may be required or requested in connection with the recording or filing of any document so signed; and

12.2.6 Shall survive an assignment by a Member of all or any portion of such Member's Units except that, where the assignee of the Units owned by the Member has been approved for admission to the Company as a Member under Section 9.2, the special power of attorney shall survive such assignment for the sole purpose of enabling Diamond Management or the Manager to sign, acknowledge and file any document necessary to effect such admission.

12.3 Notice to Members. The Manager shall promptly furnish to a Member a copy of any amendment to this Agreement signed by the Manager under a power of attorney from the Member.

13. Relationship of this Agreement to the Act. Some terms of this Agreement are intended to alter, supplant or extend provisions of the Act that would otherwise apply to the Company or the Members. This Agreement does not specify when terms are so intended to alter, supplant or extend.

14. Amendment of Agreement.

14.1 Admission of a Member. Amendments to this Agreement for the admission of any Member shall not, if in accordance with the terms of this Agreement, require the consent of any Member.

14.2 Amendments with Consent of Members. In addition to any amendments otherwise authorized by this Agreement, and subject to any restrictions set forth in this Agreement, this Agreement may be amended by a Majority Vote of the Units; provided, however, that provisions requiring a vote greater than a Majority Vote shall only be amended by such greater vote.

14.3 Amendments Without Consent of the Members. In addition to any other amendments authorized by this Agreement, the Manager may amend this Agreement, without the consent of any of the Members, to (i) change the principal place of business of the Company (as long as it stays within the City of San Diego), or (ii) decrease the rights and powers of the Manager (so long as such decrease does not impair the ability of the Manager to manage the Company and conduct its business). However, no amendment may be adopted under this Section 14.3 unless the amendment (a) is for the benefit of or not adverse to the interests of the Members, (b) is not inconsistent with Sections 7 or 8, and (c) does not affect the limited liability of the Members or the status of the Company as a partnership for federal income tax purposes.

14.4 Signing and Recording of Amendments. Any amendment to this Agreement shall be signed by the Manager as attorney-in-fact for the Members under the power of attorney contained in Section 12. After the signing of such amendment, the Manager shall also prepare and record or file any certificate or other document which may be required to be recorded or filed with respect to such amendment, either under the Act or under the laws of any other jurisdiction in which the Company holds any Property or otherwise does business.

15. Miscellaneous.

15.1 Counterparts. This Agreement may be signed in one or more counterparts, all of which shall constitute one Agreement.

15.2 Successors and Assigns. The terms and provisions of this Agreement shall be binding upon and shall inure to the benefit of the Owners and their respective successors and assigns.

15.3 Severability. In the event any section or subsection of this Agreement is declared by a court of competent jurisdiction to be void, such section or subsection shall be deemed severed from the remainder of this Agreement and the balance of this Agreement shall remain in full force and effect.

15.4 Notices. All notices under this Agreement shall be in writing and shall be given to the Company or the Owner entitled to such notice, as applicable. Any notice to an Owner shall be given by personal service or by mail, posted to the address maintained by the Company for such Owner or at such other address as such Owner may specify in writing. Any notice to the Company shall be given by personal service or by mail, posted to the address of the Company specified in Section 15.5 or at such other address as the Company may specify in writing.

15.5 Address of the Company. The address of the Company is as follows:

5160 Federal Boulevard  
San Diego, California 92105

15.6 Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of California, without regard to its conflicts of laws provisions.

15.7 Captions. Section titles or captions contained in this Agreement are inserted only as a matter of convenience and reference. Such titles and captions in no way define, limit, extend or describe the scope of this Agreement nor the intent of any provisions hereof.



15.8 Additional Documents. Each Member, upon the request of the Manager, shall perform any further acts and sign and deliver any documents which may be reasonably necessary to carry out the provisions of this Agreement, including, but not limited to, providing acknowledgment before a Notary Public of any signature made by a Member.

15.9 Disputed Matters.

15.9.1 Except as otherwise provided in this Agreement, any controversy or dispute arising out of this Agreement, the interpretation of any of its provisions, or the action or inaction of any Member or the Manager under this Agreement shall be submitted first to prompt non-binding mediation conducted in San Diego County, California, by a mediator appointed by agreement of the parties. The Company shall pay all fees and charges to the mediator associated with such mediation.

15.9.2 If the parties to the controversy or dispute fail to appoint a mediator or to hold such mediation within 30 days of a written demand by one party to the other parties for such appointment or the holding of such mediation, or if such mediation fails to resolve the controversy or dispute, such matter shall be submitted to binding arbitration in San Diego County, California, or such other place as the parties may agree upon, conducted under the commercial arbitration rules of the American Arbitration Association then in effect, and the judgment entered upon the award rendered may be enforced by appropriate judicial action.

15.9.3 The arbitration shall be conducted by a single arbitrator, the identity of whom is agreed to by each party to the dispute within 30 days following written notice by one party to the other parties requesting that a disputed matter be arbitrated. If the parties are unable within such 30 day period to agree upon an arbitrator, then the arbitrator shall be selected by the San Diego County office of the American Arbitration Association. However selected, the arbitrator shall be experienced in the area of real estate and limited liability companies and shall be knowledgeable with respect to the subject matter area of the dispute.

15.9.4 The arbitration panel shall render a decision within 30 days following the close of presentation by the parties of their cases and any rebuttal. The parties shall agree within 30 days following selection of the arbitrator to any prehearing procedures or further procedures necessary for the arbitration to proceed, including interrogatories or other discovery; provided, in any event, each Member shall be entitled to discovery.

15.9.5 The award of the arbitrator may provide that the losing party bear all or any portion greater than 50% of any fees and expenses of the arbitrator, as well as other tribunal fees and expenses, reasonable attorney's fees of both parties, any costs of producing witnesses and any other reasonable costs or expenses incurred by the arbitrator or the prevailing party.

15.10 Venue. Any legal action relating to or arising out of this Agreement shall be brought only in a court of competent jurisdiction located in San Diego County, California.

15.11 Partition. The Members agree that the assets of the Company are not and will not be suitable for partition. Accordingly, each of the Members hereby irrevocably waives any and all rights that such Member may have, or may obtain, to maintain any action for partition of any of the assets of the Company.

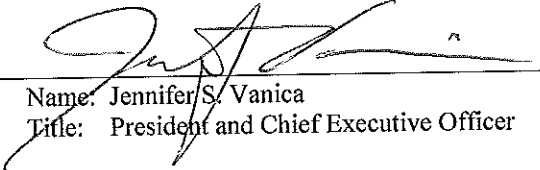
15.12 Integrated and Binding Agreement. This Agreement and the Charter, including their schedules and exhibits, contain the entire understanding and agreement among the Members with respect to their subject matter. There are no other agreements, understandings, representations or warranties among the Members, except the Subscription Agreements and documents attached or included with the Subscription Agreements.

15.13 Legal Counsel. Each Member acknowledges and agrees that counsel representing JCNI, the Company, Diamond Management and their Affiliates does not represent and shall not be deemed under the applicable codes of professional responsibility to have represented or to be representing any or all of the other Members in any respect. In addition, each Member consents to Diamond Management hiring counsel for the Company which is also counsel to the Manager and/or JCNI.


15.14 Title to Company Property. All property owned by the Company shall be owned by the Company as an entity and, insofar as permitted by applicable law, no Member shall have any ownership interest in any Company property in that Member's individual name or right, and each Member's membership interest shall be personal property for all purposes.

IN WITNESS WHEREOF, the undersigned have set their hands to this Operating Agreement of Market Creek Partners, LLC as of the date first set forth in the preamble.

JACOBS CENTER FOR NEIGHBORHOOD INNOVATION

By:   
Name: Jennifer S. Vanica  
Title: President and Chief Executive Officer

DIAMOND MANAGEMENT, INC., a California corporation

By:   
Name: Charles Buttner  
Title: President and Chief Executive Officer

1750055.26

## SCHEDULE 1

### COMPANY MEMBERS AS OF DECEMBER 31, 2006

<u>Name and Address of Each Member</u>	<u>Capital Contribution</u>	<u>Units</u>
Jacobs Center for Neighborhood Innovation 5160 Federal Boulevard San Diego, California 92105	\$20,500,000 (the appraised value of the Project plus cash contributed by JCNI), less debt, and less the proceeds of the Offering.*	140,000 to 165,000 JCNI Units**
Diamond Management, Inc. 5160 Federal Boulevard San Diego, California 92105	\$100,000 in cash	10,000 DMI Units
Neighborhood Unity Foundation 5160 Federal Boulevard San Diego, California 92105	\$500,000 in cash	50,000 NUF Units***

\* Upon a liquidation of our company, JCNI could recoup some or all of funds spent on development of the Project in excess of the deemed value of its capital contribution.

\*\* JCNI will receive 165,000 Units, if the minimum offering amount of \$250,000 is raised. JCNI will receive 140,000 Units, if the maximum offering amount of \$500,000 is raised. If an offering amount in between the minimum and maximum is raised, then the number of JCNI Units will be calculated and issued accordingly.

\*\*\* JCNI has purchased the NUF Units for the benefit of NUF and will later assign or transfer them to NUF.

## EXHIBIT A

### OPERATING AGREEMENT DEFINITIONS

“Act” means the Beverly-Killea Limited Liability Company Act, codified in the California Corporations Code, Section 17000 et seq., as the same may be amended from time to time.

“Adjusted Capital Account Deficit” means, with respect to any Member, the deficit balance, if any, in such Member’s Capital Account as of the end of the relevant fiscal year, after giving effect to the following adjustments:

(i) Credit to such Capital Account any amounts which the Member is obligated to restore and the Member’s share of Member Minimum Gain and Company Minimum Gain and;

(ii) Debit to such Capital Account the items described in Treasury Regulations Sections 1.704-1(b)(2)(ii)(d)(4), 1.704-1(b)(2)(ii)(d)(5), and 1.704-1(b)(2)(ii)(d)(6).

“Affiliate” means (i) any person directly or indirectly controlling, controlled by or under common control with another person; (ii) a person owning or controlling 10% or more of the outstanding voting securities of such other person; (iii) any officer, director or partner of such other person; and (iv) if such other person is an officer, director or partner, any company for which such person acts in any capacity. The term “person” includes any natural person, corporation, partnership, trust, unincorporated association or other legal entity.

“Agreement” means this Operating Agreement, including its schedules and exhibits, as amended from time to time.

“Articles of Organization” means the Articles of Organization of the Company as filed with the Secretary of State of California as the same may be amended or restated from time to time.

“Book Gain” means the excess, if any, of the fair market value of the Property over its adjusted basis for federal income tax purposes at the time a valuation of the Property is required under this Agreement or Treasury Regulations Section 1.704-1(b) for purposes of making adjustments to the Capital Accounts.

“Book Loss” means the excess, if any, of the adjusted basis of Property for federal income tax purposes over its fair market value at the time a valuation of the Property is required under this Agreement or Treasury Regulations Section 1.704-1(b) for purposes of making adjustments to the Capital Accounts.

“Book Value” means the adjusted basis of Property for federal income tax purposes increased or decreased by Book Gain, Book Loss, Built-In Gain and Built-In Loss as reduced by depreciation, amortization or other cost recovery deductions, or otherwise, based on such Book Value.

“Built-In Gain (or Loss)” means the amount, if any, by which the agreed value of contributed Property exceeds (or is lesser than) the adjusted basis of Property contributed to the Company by a Member immediately after its contribution by the Member to the capital of the Company.

“Capital Account” with respect to any Member (or such Member’s assignee) means such Member’s initial Capital Contribution adjusted as follows:

- (i) A Member’s Capital Account shall be increased by:
  - (a) such Member’s share of Net Income;

Exhibit A to Operating Agreement

(i)

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Income or Net Loss;

- (b) any income or gain specially allocated to a Member and not included in Net

- (c) any additional cash Capital Contribution made by such Member to the Company; and

- (d) the fair market value of any additional Capital Contribution consisting of property contributed by such Member to the capital of the Company reduced by any liabilities assumed by the Company in connection with such contribution or to which the property is subject.

(ii) A Member's Capital Account shall be reduced by:

- (a) such Member's share of Net Loss;

- (b) any deduction specially allocated to a Member and not included in Net Income or Net Loss;

- (c) any cash Distribution made to such Member; and

- (d) the fair market value, as agreed to by the Manager and the Members by a Majority Vote, of any Property (reduced by any liabilities assumed by the Member in connection with the Distribution or to which the distributed Property is subject) distributed to such Member; provided that, upon liquidation and winding up of the Company, unsold Property will be valued for Distribution at its fair market value and the Capital Account of each Member before such Distribution shall be adjusted to reflect the allocation of gain or loss that would have been realized had the Company then sold the Property for its fair market value. Such fair market value shall not be less than the amount of any nonrecourse indebtedness that is secured by the Property.

Except for the Project, property other than money may not be contributed to the Company except by a Majority Vote. Property of the Company may not be revalued for purposes of calculating Capital Accounts unless the Manager and the Members by a Majority Vote agree on the fair market value of the Property and the Company complies with the requirements of Treasury Regulations Section 1.704-1(b)(2)(iv)(f) and (g); provided, however, for purposes of calculating Book Gain or Book Loss (but not for purposes of adjusting Capital Accounts to reflect the contribution and distribution of such Property), the fair market value of Property shall be deemed to be no less than the outstanding balance of any nonrecourse indebtedness secured by such Property; Capital Accounts are adjusted to reflect the contribution or revaluation, including, without limitation, the valuation of such Property and the selection of book depreciation methods; and the Members, by a Majority Vote, agree on the allocation among the Members of items of income, gain, depreciation, amortization and loss reflecting to such Property for federal income tax purposes.

The Capital Account of a Member shall include the Capital Account of such Member's transferor. Despite anything to the contrary in this Agreement, the Capital Accounts shall be maintained in accordance with Treasury Regulations Section 1.704-1(b). References in this Agreement to the Treasury Regulations shall include corresponding subsequent provisions.

"Capital Contribution" means the gross amount invested in the Company by a Member and shall be equal in amount to the cash purchase price paid by such Member for the Units sold to such Member by the Company. In the plural, "Capital Contributions" means the aggregate amount invested by all of the Members in the Company and shall equal, in total, the sum of the amount attributable to the purchase of Units and the contributions of the Manager.

"Cash from Operations" means the net cash realized by the Company from all sources, including, but not limited to, the operations of the Company inclusive of the sale, financing, refinancing or other disposition of the Project after payment of all cash expenditures of the Company (including, but not limited to, all operating expenses

Exhibit A to Operating Agreement

(ii)

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inclusive of all fees payable to the Manager or its Affiliates, all payments of principal and interest on indebtedness, expenses for repairs and maintenance, capital improvements and replacements, and such reserves and retentions, including, but not limited to, the Repurchase Reserves, as the Manager reasonably determines to be necessary and desirable in connection with Company operations with its then existing assets and any anticipated acquisitions).

“Charter” means the Diamond Community Investors Charter, including its schedules and exhibits, as amended from time to time.

“Code” means the Internal Revenue Code of 1986, as amended, or corresponding provisions of subsequently enacted federal revenue laws.

“Company” means Market Creek Partners, LLC, a California limited liability company.

“Company Minimum Gain” means “partnership minimum gain” as set forth in Treasury Regulations Section 1.704-2(d).

“DCI Preferred Return” shall have the meaning set forth in Section 4.1.1(b).

“DCI Units” means Units issued under Section 3.4 or subsequently issued to persons meeting the Diamond Community Stakeholder qualifications.

“Diamond Community Investors” means Members who hold DCI Units.

“Diamond Community Stakeholder” shall have the meaning set forth in Section 3.4 of the Charter.

“Diamond Management” means Diamond Management, Inc., a California corporation.

“Diamond Neighborhoods” means the following neighborhoods in the City of San Diego: Chollas View, Emerald Hills, North Encanto, South Encanto, Lincoln Park, Mt. Hope, Mountain View, Oak Park, Valencia Park and Webster.

“Distributable Cash” means Cash from Operations and Capital Contributions determined by the Manager to be available for Distribution to the Members.

“Distribution” shall refer to any money or other property transferred without consideration (other than repurchased Units) to Members or Owners with respect to their interests or Units in the Company, but shall not include any payments to the Manager under Section 6.

“DMI Representative” shall have the meaning set forth in Section 1.3.1.1 of the Charter.

“DMI Units” means the Units issued to Diamond Management under Section 3.2.

“Economic Interest” means an interest in the Net Income, Net Loss and Distributions of the Company but shall not include any right to vote or to participate in the management of the Company.

“Economic Interest Owner” means the owner of an Economic Interest who is not a Member.

“Escrow Account” shall have the meaning set forth in Section 3.4.4.

“Event of Insolvency” shall occur when an order for relief against the Manager is entered under Chapter 7 of the federal bankruptcy law, or (A) the Manager: (1) makes a general assignment for the benefit of creditors, (2) files a voluntary petition under the federal bankruptcy law, (3) files a petition or answer seeking for the Manager a reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief under any statute,

law or regulation, (4) files an answer or other pleading admitting or failing to contest the material allegations of a petition filed against the Manager in any proceeding of this nature, or (5) seeks, consents to, or acquiesces in the appointment of a trustee, receiver, or liquidator of the Manager or of all or a substantial part of the Manager's properties, or (B) the expiration of 60 days after either (1) the commencement of any proceeding against the Manager seeking reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief under any statute, law, or regulation, if the proceeding has not been dismissed, or (2) the appointment without the Manager's consent or acquiescence of a trustee, receiver, or liquidator of the Manager or of all or any substantial part of the Manager's properties, if the appointment has not been vacated or stayed (or if within 60 days after the expiration of any such stay, the appointment is not vacated).

"Indemnitee" shall have the meaning set forth in Section 7.9.1.

"Interest" means a Membership Interest or an Economic Interest.

"JCNI" means Jacobs Center for Neighborhood Innovation, a California nonprofit public benefit corporation.

"JCNI/Diamond Management Return" shall have the meaning set forth in Section 4.1.1(d).

"JCNI Units" means the Units issued to JCNI under Section 3.1.

"Liquidation" means with respect to the Company the earlier of the date upon which the Company is terminated under Section 708(b)(1) of the Code or the date upon which the Company ceases to be a going concern (even though it may exist for purposes of winding up its affairs, paying its debts and distributing any remaining balance to its Members), and with respect to a Member where the Company is not in Liquidation means the date upon which occurs the termination of the Member's entire interest in the Company by means of a Distribution or the making of the last of a series of Distributions (whether or not made in more than one year) to the Member by the Company.

"Majority Vote" or "Majority Vote of the Units" means the vote of more than 50% of the outstanding Units unless the context is with respect to a certain class or classes of Units, in which case it refers to a vote of the Units of such class or classes. Therefore, as used in the Agreement generally, the term "Majority Vote of DCI Units" means a vote of more than 50% of the outstanding DCI Units. However, with respect to the vote of Diamond Community Investors or DCI Units on matters as to which the Diamond Community Investors vote separately under the Charter, "Majority Vote" means the vote of a majority of the Diamond Community Investors (per capita).

"Manager" shall refer to the manager of the Company at any given time, including the Company's initial manager, Diamond Management.

"Member" means any holder of a Unit who is admitted to the Company as a member.

"Member Minimum Gain" means "partner nonrecourse debt minimum gain" as determined under Treasury Regulations Section 1.704-2(i)(3).

"Member Nonrecourse Debt" means "partner nonrecourse debt" as set forth in Treasury Regulations Section 1.704-2(b)(4).

"Membership Interest" means a Member's entire interest in the Company including such Member's Economic Interest and such voting and other rights and privileges that the Member may enjoy by being a Member.

"Net Income" or "Net Loss" means, respectively, for each taxable year of the Company the taxable income and taxable loss (exclusive of Built-In Gain or Loss) of the Company as determined for federal income tax purposes in accordance with Section 703(a) of the Code (including all items of income, gain, loss, or deduction required to be



separately stated under Section 703(a)(1) of the Code) (other than any specific item of income, gain (exclusive of Built-In Gain), loss (exclusive of Built-In Loss), deduction or credit subject to special allocation under this Agreement), with the following modifications:

(a) The amount determined above shall be increased by any income exempt from federal income tax;

(b) The amount determined above shall be reduced by any expenditures described in Section 705(a)(2)(B) of the Code or expenditures treated as such under Treasury Regulations Section 1.704-1(b)(2)(iv)(i);

(c) Depreciation, amortization and other cost recovery deductions shall be computed based on Book Value instead of on the amount determined in computing taxable income or loss. Any item of deduction, amortization or cost recovery specially allocated to a Member and not included in Net Income or Net Loss shall be determined for Capital Account purposes in a similar manner; and

(d) For purposes of this Agreement, Book Gain and Book Loss attributable to a revaluation of Property attributable to unrealized gain or loss in such Property shall be treated as Net Income and Net Loss.

“Nonrecourse Debt” shall have the meaning set forth in Treasury Regulations Section 1.704-2(b)(3).

“Nonrecourse Deductions” shall have the meaning, and the amount thereof shall be, as set forth in Treasury Regulations Section 1.704-2(c).

“NUF” means the Neighborhood Unity Foundation, a California nonprofit public benefit corporation.

“NUF Return” shall have the meaning set forth in Section 4.1.1(c).

“NUF Units” means the Units issued to NUF under Section 3.5.

“Offering” shall have the meaning set forth in the Recitals.

“Offering Circular” means the Offering Circular used in connection with the Offering.

“Owner” means a Member or a holder of an Economic Interest.

“Prime Rate” means the reference rate announced from time-to-time by The Wall Street Journal, and changes in the Prime Rate shall be deemed to occur on the date that changes in such rate are announced.

“Project” shall refer to the community shopping center near the corner of Market Street and Euclid Avenue in San Diego, called “Market Creek Plaza,” and the vacant lot near the southeast corner of the intersection of 47th and Market Streets in San Diego, called the “47th & Market” property.

“Property” shall refer to any or all of such real and tangible or intangible personal property or properties as may be acquired by the Company, including the interests of the Company in the Project.

“Property Management Agreement” means the Property Management Agreement entered into between Diamond Management and the Company to manage the Project, as amended from time to time.

“Property Manager” means Diamond Management, in its capacity as the manager of the Project under the Property Management Agreement.

“Regulatory Allocations” means the allocations set forth in Sections 4.2(a) through (c).

Exhibit A to Operating Agreement

(v)

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“Repurchase Reserve” shall have the meaning set forth in Section 4 of the Charter.

“Subscription Agreement” means the agreement, in the form attached to the Offering Circular, by which each person desiring to purchase DCI Units shall evidence (i) the number of DCI Units which such person wishes to acquire and (ii) such person’s agreement to become a party to, and be bound by the provisions of, this Agreement and (iii) certain representations regarding the person’s finances, relationship with the Diamond Neighborhoods and investment intent.

“Subscription Payment” means the payment for the DCI Units proposed to be purchased under a Subscription Agreement.

“Tax Payment” shall have the meaning set forth in Section 4.8.

“Total Outstanding Units” means all of the issued and outstanding Units of the Company, including both the Membership Interests and Economic Interests.

“Transfer” shall have the meaning set forth in Section 9.1.

“Transferee” shall have the meaning set forth in Section 9.1.

“Transferor” shall have the meaning set forth in Section 9.1.

“Unit” shall represent an interest in the Company entitling the owner of the Unit if admitted as a Member to the respective voting and other rights afforded to a Member holding an Unit, and affording to such Member a share in Net Income, Net Loss and Distributions as provided for in this Agreement.

